IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 171 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

M/S. KAUSHAL ENTERPRISES - Petitioner(s)
Versus
AVANI SALES AGENCY PVT. LTD. - Respondent(s)

==========

Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR BJ TRIVEDI for Respondent(s) : 1,
MR JT TRIVEDI for Respondent(s) : 1,
MS JIGNASA B TRIVEDI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/01/2007

ORAL JUDGMENT

1. Present Company Petition has been filed by the petitioner for an appropriate order of winding up of the respondent company – Avani Sales

Agency Private Limited under the provisions of the Companies Act; 1956.

2. It is the case on behalf of the petitioner that an amount of Rs.7,61,091/- was due and payable by the respondent to the petitioner as on 15th June, 2006, which was for supply of chemicals. It is also the case on behalf of the petitioner that inspite of repeated demands and requests made by the petitioner, the respondent company neglected to pay the dues and therefore, the petitioner was constrained to serve a statutory notice upon the respondent as required under Sections 433 and 434 of the Companies Act; 1956 and accordingly, a statutory notice dated 1.7.2006 was served upon the respondent company. It is submitted that inspite of service of the statutory notice, neither there was any reply to the statutory notice nor any payment was made and therefore, the petitioner has preferred the present Company Petition. It is the contention on behalf of the petitioner that the respondent company has neglected to pay the dues of the

petitioner and the respondent company has lost its financial substratum and is required to be ordered to be wound up.

3. The present Company Petition came to be admitted on 14th November, 2006 and the admission and date of final hearing was required to be published in two local newspapers and by affidavit of publication dated 8th December, 2006, it has been confirmed that the admission and date of final hearing was published/advertised in two local newspapers i.e. one “Indian Express” (English), Ahmedabad edition and “Sandesh” (Gujarati), Ahmedabad edition dated 5th December, 2006. There is no objection received by this Court opposing the present Company Petition. There is no reply filed by the respondent company opposing the present petition. The averments in the Company Petition are not disputed. Inspite of service of statutory notice, neither there is any reply to the statutory notice nor even there is a reply to the present petition and the respondent company has neglected to make the payment and

the respondent company has not even come out with a case that the respondent company is a running and/or profit making company. Thus, it appears that the respondent company has lost its financial substratum and is not in a position to make the payment of its debts to its creditors inclusive of the petitioner.

4. Under the circumstances, the respondent company is ordered to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company – Avani Sales Agency Private Limited. The Official Liquidator is hereby asked to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books, etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note, etc. No costs.

[M.R.Shah, J.]

kdc